

Eastham Conservation Commission

2500 State Highway
Eastham, MA 02642
508-240-5900



MINUTES

Conservation Commission Meeting 6:00 P.M, Tuesday, October 26, 2021

Commissioners Present: Sheila Filipowski, Karen Strauss, Charles Wagner, Janet Benjamins, Thomas Durkin, Suzanne Bryan.

Agent Present: Charles Katuska

Also Present: Tarja L. McGrail, Tim Klink, Bruce and Kate Langsen, Tim Brady, Keith Johnson, Ken MacAfee, Caitrin Higgins, Gerald Billow, Barbara Kellman, Jason Ellis, Stephanie Sequin, Tom Dempsey, Thomas and Marlene Gerhard, Joe Mistretta, Keith Johnson, James Lynch.

6:00 PM Meeting opened by Sheila Filipowski and executed roll call.

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

PUBLIC HEARINGS

Notice of Intent filed by Edward & Katherine Garvey Finn. Applicant proposes to install a pool, patio, patio drywell, removal of existing sewage disposal system, connecting to gas service and water service at property located at 475 South Sunken Meadow, Map 04, Parcel 047.

Tarja L. McGrail, represented the applicant. The Representative reviewed the property and discussed the buffer zones, proposed pool and the patio surround, retain wall, drywells, and gas service and Town water connection. The Conservation Chair inquired on the proposed trees that are being removed and what mitigation is being proposed. Tim Klink represented the applicant and stated that there is no mitigation proposed due to the area being heavily vegetated. The Conservation Chair inquired on how much fill would be brought in and was advised that they are proposing a retaining wall around the pool instead off fill. The Representative continued to discuss fill, slope in the front yard, machine use, replanting, and had not yet calculated the amount of fill. The Conservation Chair requested more information concerning the fill. The Representative discussed pool runoff, drainage, and the catch basins. The Conservation Chair inquired on the size of the pool and the pool deck being an 80% increase area within the buffer zone. The

Representative stated that he would have to check that increase. The Conservation Chair inquired on the flood plain. The Representative stated the location of the flood plain, and run off management.

A Commissioner would like more detail about the pool chemicals and if it will be drained. The Representative stated the pool would be a saltwater fiberglass pool that does not need to be drained. The Representative stated that if the pool needs to be drained it would be done using a truck to drain and bring water in and offered to supply additional information. Two Commissioner feel the proposed plan is satisfactory and continued to discuss why. Another Commissioner requested more information on the trees that are being removed and asked what material would be used for construction of the patio. The Representative stated that it would be an interlocking paver material with stone dust and a concrete rock and continue to discuss the area with the Commissioners. The Commissioner would like more information on the patio, retaining wall and mitigation. Another Commissioner asked for the limit of work to be pointed out and was advised where the limit of work was on the site plan. The Commissioner asked about the area that is going to be cleared and would like to know what will happen to the area once it is cleared. The Conservation Agent requested more information on the drywells, and how the run off will be collected and dispersed and continued to discuss different options and maintenance with the Representative and Commissioners. The Conservation Agent stated that the next proposal on the agenda is next door to this one and stated the importance to make sure the buffer zones match up.

The Representative requested a continuation until November 23, 2021.

Janet Benjamins **MOVED** to continue until November 23, 2021. Karen Strauss **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Notice of Intent filed by Elizabeth Cushwa, Trustee. Applicant proposes a 13' x 14' addition, construction of a patio with a walk and steps, multiple decks removed and reconstructed, a plant bed, drywell, and a driveway extension at property located at 435 South Sunken Meadow, Map 04, Parcel 046.

Tarja L. McGrail and Tim Klink represented the applicant. The Representative discussed the property, being within the 100-foot buffer, proposed bathroom addition, removing and rebuilding 2 decks, patio addition and extension of the driveway. The Representative continued to discuss flood zone, proposed project area, dry walls for management from pervious areas, and delineation of the flood zone and adjustments of the zone.

The Conservation Chair inquired on the elevation of the driveway. The Representative stated that the elevation would go from 12 to 22. The Conservation Chair inquired on runoff. The Representative stated that the driveway already exist and the only change is the elevation at the top of the driveway.

A Commissioner inquired on the details concerning the patio, walk way, and was advised they are not included. The Commissioner requested more information concerning the material used for the patio and the fill, and requested mitigation. Two Commissioner feels that the run off will be taken care of by the drywells and does not fee mitigation is necessary. Another Commissioner requested revised plans.

The Conservation Agent inquired on how the water will go from the patio to the drywell and continued to discuss location of the drywell. The Representative stated that change could be made.

The Representative requested a continuation until November 23, 2021.

Karen Strauss **MOVED** to continue until November 23, 2021. Thomas Durkin **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Notice of Intent filed by Kathleen Langsen. Applicant proposes to maintain vista view per deeded view easement at property located at 95 Herring Brook Road, Map 17, Parcel 498.

Bruce and Kate Langsen represented their request and discussed the deed and the proposed project. The Conservation Chair inquired on pruning and topping of the trees and asked the applicants point of view to what is happening with the trees. Ken MacAfee from the Bartlett Tree Company discussed crown-topping, trees being a minimal height of 25-feet, and the process that will be used with the Commissioners.

The Conservation Chair inquired if the property owners were advised and the applicant stated yes.

A Commissioner stated the vista pruning by law has changed to not allow topping and requested the order of conditions to stated there will be not topping. The Representative agreed.

The Conservation Agent inquired if Bartlett Tree has been doing the vista view maintenance at this property and was advised they have been for 11 years. The Conservation Agent requested more information on the past crowning at this property. The Conservation Agent stated that the DEP number has not been received for this project.

The Conservation Chair requested a continuation until November 9, 2021

Commissioner Janet Benjamin's connection was lost during the remote meeting.

Karen Strauss **MOVED** to continue until November 9, 2021. Suzanne Bryan **SECONDED, ALL IN FAVOR.**

Benjamins – CONNECTION LOST.

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Continuation of Notice of Intent filed by Virginia Delaney. Applicant proposes shoreline stabilization measures at property located at 115 Barrow House Road, Map 01, Parcel 014.

Tim Brady and Keith Johnson represented the applicant and stated that the notes requested by the Commissioners has been added to the plan, ACEC line has been added, showing the change of length of stabilization with 35 cubic yards of fill indicated on the site plan. The Representative also stated that a drywell note was added, with leaching chamber and pipes leading to leaching area. The Representative stated that the Division of Fisheries and Wildlife letter stating there will be no ill effect and discussed the river front area with the Commissioners.

The Conservation Chair asked for an explanation of changing the slope by the bank and how that helps the environment and accomplishes what is needed. The Representative discussed the difference of a steeper slope versus a gradual slope when it comes to runoff and plantings. Another Commissioner stated concern of the fill and runoff and wonder if it has to be as large as proposed. The Representative stated that it is not really any larger and explained why to the Commissioners. The Representative discussed fragmites, erosion off the bank, and plantings in the area. A Commissioner asked if the drywell could be pulled back from the bank and was advised that it could be moved landward if practical. Another Commissioner inquired on what is planted on the slope currently and what is being proposed. The Representative stated that the existing slope has fragmites, and are planting a salt tolerance seed mix, and a bush. The Conservation Chair stated that is not added to the plan and was advised the information is in the original paperwork. Another Commissioner does not understand the amount of fill, and was advised the fill is required due to being 65 feet long and have a slope that does not allow the slope to erode quickly and continued to discuss the proposed project with the Commissioners.

The Conservation Agent would like to see a better blend from the slope to the existing area and discussed it with the Representative. The Conservation Agent stated that a DEP file number has not been received for this proposed project.

The Representative requested a continuation until November 9, 2021.

Janet Benjamins is re-connected.

Suzanne Bryan **MOVED** to continue until November 9, 2021. Charles Wagner **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Continuation of Notice of Intent filed by Gerald Billow& Barbara Kellman. Applicant proposes removal of invasive plant species, site restoration, plant management and establishment of two view corridors at property located at 120 Lawton Road, Map 14, Parcel 050.

Caitrin Higgins represented the applicant and discussed the changes with the Commissioners. The Representative revised the plan for the shrubs, limit of work, ACEC, not removing rubble, revised the on foot center spacing, edited note #6, removal of invasive species, proposed Barnstable County native Species, included note for dying maple, vista pruning and reducing the main view corridors width by 6

feet. The Representative stated what vegetation would remain and that 93 shrubs will be planted and continued to discuss the projects impact on the property.

The Conservation Chair requested a clarification concerning reducing saplings. The Representative advised that means that when there are 2 saplings close together, the healthy sapling is identified and competing sapling is removed. The Conservation Chair inquired on the statement concerning ongoing herbicide management. The Representative stated that is standard language and is concerning maintaining the properties invasive species.

A Commissioner requested the Representative to discuss the work within the ACEC as it complies with Eastham Regulations. The Representative stated that they believed it was only to delineate the ACEC and is not prepared to answer this question. The Commissioner stated that the information was requested during the first meeting. Another Commissioner agreed with the Commissioner concerning the ACEC and is opposed of having two view corridors, questioned the irrigation by the house, and sees the proposed as a landscaping project. Another Commissioner agrees with the ACEC additional information, reducing the need to reapply for vista pruning permission by using native plants, but feels it is a lot of work within the 50-foot buffer zone causing possible erosion within a sensitive area, and is in favor of having multiple view corridors.

A Commissioner stated concern of transplanting shrubs and removing the proposed trees, which would change the habitat to the location. The Commissioner also stated that the saplings that are 5 inches are considered a tree, and questioned the type of saplings that are to be removed. The Representative stated that any saplings 5 inches and above will be left and is unsure of the type and number of the saplings to be removed and reminded the Commissioner of the 109 that are being left.

The Representative also stated on page 6 of the plan speaks to the ACEC and continued to discuss this area with the Commission. A Commissioner inquired if any saplings will be removed within the ACEC area and the Representative agreed on a condition stating that no saplings will be removed. The Commissioner stated that they would like the Willow Shrub (unless not native), Blueberry Bush, Azalea's and the Multi-stem Maple Tree stay where they are and continued to discuss this with the Representative. The Representative stated the Maple is dying and offered to cut down and leave on the pond edge. The Commissioner inquired if the tree will be taken down and left and was advised some pieces will go into the water, and some pieces farther back and decay in place without it being near shrubs and scatter around the property. Another Commissioner inquired why the tree could not be left in place. The Representative stated the applicant has safety concerns leaving the tree.

The Applicants stated they have lived at the house for 10 years, and continued to discuss the view corridors, ACEC question not being clear, and that the Maple tree and Oak tree are dying and are blocking the view and continued to discuss the proposed project with the Commissioners.

The Commissioners stated they would like the Willow Shrub (unless not native), Blueberry Bush, Azalea's stay and the Multi-stem Maple Tree be cut down and with most of it laid perpendicular to the bank to supply habitat. Another Commissioner stated concerned about having two view corridors, the steepness of the bank and changing the wildlife habitat the irrigation by the house, which needs to be removed.

The Conservation Chair stated that there is regulation concerning irrigation and requested it to be removed. The Applicant stated that they have not used irrigation since living at the property and is not sure what the Commission is referring too. The Commissioners stated that the irrigation is located on the right side of the house walking towards the bank. The Conservation Chair stated that the irrigation will have to be dealt with later and requested that they go back to discuss the plan and proceed with a vote on

the proposed. The Representative stated that there are active permits with view corridors that are larger than proposed.

The Conservation Chair inquired if any Commissioner had any other concerns and stated that the irrigation system issue could be added on as a Condition.

Karen Strauss **MOVED** to close the meeting. Charles Wagner **SECONDED, 5 IN FAVOR, 1 NOT IN FAVOR.**

Benjamins – NEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

The Conservation Agent stated that the next step is to vote on the project and discuss conditions of the vegetation that is to be left. The Conservation Chair requested a Condition concerning the irrigation, and was advised by the Conservation Agent that it is a standard condition and can be added to the permit. Another Commissioner inquired about the Oak tree that is requested to be removed, and was advised that the Oak Tree will be removed and went over what trees/saplings will stay and what trees/saplings will be removed by the Conservation Chair. The Conservation Chair also stated a Condition concerning the Maple being cut down and left perpendicular to the bank.

Charles Wagner **MOVED** to approve with Conditions stated. Karen Strauss **SECONDED, 3 IN FAVOR, 2 NOT IN FAVOR, 1 ABSTAINED.**

Benjamins – NEA

Bryan - ABSTAINED

Durkin – NEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

The Conservation Agent stated that the vote does not stand due to the vote being 3 YEA, 2 NEA, 1 ABSTAINED and advised the Commissioner who abstained to watch the missed meeting videos concerning this proposal that was missed and then sign the Mullin documentation. The Representative inquired to why it is not considered a majority vote and was advised by the Conservation Agent that the law require a majority of the Commission, the order having to be issued within 21 days and the Mullin Rule.

The Conservation Agent stated that a continuation is need and continued to explain the meetings that were missed by the one Commissioner, and explained the rule to the Applicant.

The Conservation Chair stated that the proposed project would be continued until the next meeting allowing the Commissioner to watch previously recorded videos of the meeting concerning this proposal.

REGULATORY DETERMINATIONS

Request for Determination filed by Roger McKenzie & Donna Cary. Applicant proposes to install a new septic system at property located at 284 Windjammer Lane, Map 19, Parcel 104B.

Jason Ellis represented the applicant and stated the proposed septic system. The Representative continued to discuss the Title 5 failure, upgraded system, new septic tank with an IA system, component placement, truck access up driveway to the right of the house, being out of the flood zone and would take a day or two to complete.

The Conservation Chair inquired on what vegetation would be removed and was advised that the Red Cedar Tree would stay and the Rhododendron will be removed. The Conservation Chair requested that the Rhododendron be replaced. The Representative offered 2 Eastern Red Cedars for removing the Rhododendron but stated the property is well vegetated. The other Commissioners agreed on the Mitigation and leaving the Cedar tree.

Janet Benjamins **MOVED** to approve under a Negative Determination of Applicability for reason number 3. Karen Strauss **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Request for Determination filed by Dean Bajonh. Applicant proposes water service connection at property located at 25 Bluebill Lane, Map 17, Parcel 519.

The Conservation Agent stated that it is a straightforward connection from the street, and recommended approval.

Charles Wagner **MOVED** to approve under a Negative Determination of Applicability for reason number 3. Karen Strauss **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Request for Determination of Applicability filed by George W. Fardy. Applicant proposes installation of water service connection at property located at 13 Charlie Noble Way, Map 19, Parcel 003.

The Conservation Agent stated the proposed project and recommended approval.

Karen Strauss **MOVED** to approve under a Negative Determination of Applicability for reason number 3. Janet Benjamins **SECONDED, ALL IN FAVOR.**

Benjamins – YEA
Bryan - YEA
Durkin – YEA
Strauss - YEA
Wagner - YEA
Filipowski –YEA

Continuation of Request for Determination of Applicability filed by Thomas C. and Marlene K. Gerhard to remove existing patio/hardscaping and replace with new hardscaping at property located at 385 Mary Chase Road (Rear), Map 18, Parcel 075.

Stephanie Sequin, Tom Dempsey and the applicants represented the proposed project. The Representative stated the concerns from the previous hearings, and went over the concerns and solutions with the Commissioners. The Representative stated that easy joint paving compound would be used instead of the Polymeric Sand. The Representative also discussed notes on the site plan concerning the paving compound, revised construction protocol, cement under the drainage trench and not beyond the footprint, a pre-construction meeting prior to starting and after the drainage ditch is excavated and prior to adding additional material to the trench.

The Conservation Chair inquired on trees and limit of work. The Representative stated a Cedar Tree would need a limb removed for access. A Commissioner stated that the concrete has not been used within the buffer zone. The Representative stated that the concrete is to hold the boarder in place and the drainage stone in place. The Commissioner inquired why the concrete is needed when the stone is so large. A Representative stated the cobble stone is not very large and can move very easily without the cement. The Representative also stated that the grade change goes down and the cement will anchor the cobblestone and granite edging keeping the patio in place.

The Conservation Agent stated the following Conditions, standard pre construction meeting, no trees removed or damaged with exception of the branch if approved, a Condition concerning the joint compound, concrete, and that it does not seal off the trench, and that there is no sealer used over the Easy Joint Compound or the stones. The Representatives agreed with the Conditions.

Karen Strauss **MOVED** to approve under a negative determination for reason number 3. Thomas Durkin **SECONDED, 5 APPROVED, 1 ABSTAINED.**

Benjamins – YEA
Bryan - ABSTAINED
Durkin – YEA
Strauss - YEA
Wagner - YEA
Filipowski –YEA

ADMINISTRATIVE MATTERS

Continuation of Request for Plan Change Review for SE 19-1772. Permittee (Bernard & Diane Durante) requests changes to approved pool & retaining wall plan to permit installation of permanent irrigation in the outer 20' of the buffer zone in order to support permanent vegetation on a slope at property located at 255 Mary Chase Road, Map 18, Parcel 80A.

The Conservation Agent stated the matter was back on the agenda for verification of what the Commissioners findings were concerning the proposed request. The Conservation Chair stated that the

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The Video for this meeting can be found at <https://www.eastham-ma.gov/home/pages/demand-video-meetings-and-special-programs>.

Commissioners agreed to no temporary irrigation and/or permanent irrigation allowed, A Commissioner stated that the request was to have the underground hose attach to a shed and the Commission had been waiting for an explanation. The Conservation Chair also questioned what the applicant wanted to irrigate and was advised that it was a 50 foot x 50 foot section within the buffer zone. The Conservation Chair inquired on the temporary irrigation that is in currently in place now and was advised that was from the original approved Order of Conditions. Another Commissioner stated that the request was to run water to an existing faucet and another commissioner stated that the applicant requested to add a faucet. The Conservation Chair requested the applicant be called and advised of the Commissioners questions and was advised by the Conservation Agent that an attempt to reach the Representative was unsuccessful. The Conservation Chair requested a continuation to give the opportunity for the project to be represented.

Karen Strauss **MOVED** until November 9, 2021. Janet Benjamins **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Continuation of Administrative Review filed by Joe Mistretta. Applicant proposes to remove one Pine Tree at property located at 45 Mallard Lane, Map 13, Parcel 099.

Joe Mistretta represented his project and stated he submitted the request due to the location to the buffer zone. The Conservation Chair stated that the trees are within the buffer zone and the tree is leaning away from the house. The Applicant stated that there is a concern if the tree falls it would possibly hurt the healthy trees that surround the tree. The Applicant also stated that the tree would be taken down in sections.

Charles Wagner **MOVED** to approve. Karen Strauss **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Violations

Violation at Silver Springs Beach Association for a 16' x 4' ramp that was constructed at the end of the West Road section of an approved stairway and boardwalk at property located West Road, Map 04, Parcel 480 & 482.

The Conservation Agent stated a phone call was received concerning the Violation. The Conservation Agent stated that a ramp was added after a Certificate of Compliance was issued for the boardwalk and stairway and continued to discuss the Violation with the Commissioners.

Tim Klink represented Bob McKinley and advised the Commissioners that Mr. McKinley removed the steps and added the ramp and feels that a Violation should not have been issued. The Representative stated that the ramp would be removed and requested the ramp to be re-added without the pressure treated wood and advised the Commissioners of past changes to the boardwalk.

Mr. Lynch represented the Silver Springs Beach Association and stated the process of the Order of Conditions and Certificate of Compliance concerning the stairway and boardwalk. Mr. Lynch stated that the boardwalk extends into West Road and requested for the Violation be corrected, ramp be removed and the step returned, and discussed how the extension is not part of the previous Order of Conditions and continued to discuss the Violation with the Commissioners.

Keith Johnson, the owner of 15 West Road stated the ramp should be removed and be restored to its original state.

The Commissioners agreed that the ramp should be removed and put back to its original state after the Certificate of Compliance.

The Conservation Agent inquired if Mr. McKinley is going to remove the ramp, and was advised yes by the Representative. The Conservation Chair stated that an enforcement order should be issued to restore the stairs and the extra sand be removed. The Representative stated the fill is beach sand and requested that it not be removed. The Commissioners continued to discuss the Violation with the Representatives.

The Conservation Chair asked for a motion to continue the matter for 2 weeks, request the Conservation Agent to issue a revised letter to the Beach Association for non-involvement and a new Violation letter to Mr. McKinley and the ramp be removed from the boardwalk and the step replaced.

Suzanne Bryan **MOVED** to approve with conditions stated. Karen Strauss **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Liaison Reports

The Commissioners discussed their Liaison Reports.

Education & Training Updates

The Commissioners discussed education and training updates.

Minutes

September 14, 2021 Minutes

Janet Benjamins **MOVED** to approve the minutes. Karen Strauss **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Filipowski –YEA

Other Discussion

The Commissioners discussed the upcoming work session with the Conservation Agent.

Suzanne Bryan **MOVED** to adjourn. Karen Strauss **SECONDED, ALL IN FAVOR.**

Benjamins – YEA

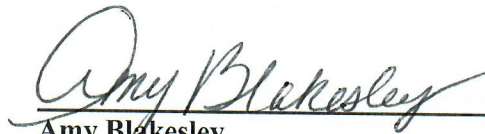
Bryan - YEA

Durkin – YEA

Strauss - YEA

Wagner - YEA

Respectfully Submitted as prepared by,



Amy Blakesley



Sheila Filipowski, Chairman Conservation Commission